IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1171

STATE OF MINNESOTA,

Petitioner,

vs.

CLOVER LEAF CREAMERY COMPANY, PHILLIPS PETROLEUM COMPANY, MARIGOLD FOODS, INC., UNILOY DIVISION OF HOOVER UNIVERSAL, INC., WEBER & BARLOW STORES, INC., THE SOCIETY OF THE PLASTICS INDUSTRY, INC., WELLS DAIRY, INC., and M-H PACKAGING SYSTEMS, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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QUESTION PRESENTED

Did the Minnesota Supreme Court err in invalidating a legislative ban on the sale of milk in nonreturnable, nonrefillable plastic containers as violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, where the factual record established that the classification was not rationally related to a legitimate state interest?

STATEMENT OF THE CASE

The Minnesota Legislature enacted a unique criminal statute, Minn. Laws 1977, Ch. 268 ("Act") which banned the sale of milk in Minnesota in nonreturnable, nonrefillable plastic containers. The Act did not affect the sale of any other products in plastic containers, such as windshield washer fluid, fruit juices (which are sold in the same plastic containers by the same dairies that use plastic containers for milk), and laundry bleach. It did not affect the sale of milk in the only other type of nonreturnable container used for milk in Minnesota, the plastic-coated paper carton.

After trial involving the resolution of complex factual issues, the District Court for Ramsey County, Minnesota (David Marsden, J.) found the Act constitutionally deficient in that it deprived plaintiffs of substantive due process, denied them equal protection of the laws, and constituted an unreasonable burden on interstate commerce.

The Minnesota Supreme Court affirmed the trial court's determination that the Act violated the Equal Protection Clause of the Fourteenth Amendment. In doing so, it concurred with the fact finder's evaluation of the testimonal evidence, and it independently evaluated the documentary evidence received at trial.

Petitioner's Statement of the Case contains substantial deviations from the record and from the Minnesota Court's opinion, some of which will be noted in later sections of this brief. As it did in its brief before the Minnesota Supreme Court, Petitioner has attached to its petition as Appendix C one of the 42 trial exhibits. It seeks, by concentrating on this exhibit, to gloss over the great volume of testimonial and documentary evidence produced at trial. The purpose of much of

this evidence was to explain the nature of the information contained in the Midwest Research Institute Report, which was prepared for the U. S. Environmental Protection Agency and concerned the relative environmental impacts of various types of milk containers.[1] This evidence also updated the information in the Report to account for the reduction in weight of the plastic container since the preparation of the Report. Included in the evidence was the testimony of the person from the Midwest Research Institute who was in charge of preparing the Report.

From all of this evidence the trial court found and the Minnesota Supreme Court held that the adverse environmental impacts of the paper container are greater than those of the plastic container. The factual bases for this conclusion are discussed in detail in the opinion of the Minnesota Supreme Court.

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[1] Having commissioned and received the MRI Report, the EPA does not intend to propose any rules or legislation on the subject of milk containers. (Ades deposition (admitted as evidence), p. 18.)

REASONS FOR DENYING THE WRIT

I. THE MINNESOTA SUPREME COURT USED THE CORRECT EQUAL PROTECTION STANDARDS AND APPLIED THEM PROPERLY.

In reaching its decision the Minnesota Supreme Court applied the long-established rational basis standard to the unique facts of this case. Its decision does not expand the frontiers of equal protection. It does not even touch upon the component of equal protection doctrine which has received the most judicial analysis in recent years, i.e., whether a statute will be subjected to a higher level of scrutiny than is required by the rational basis test.

In an effort to attract this Court's attention, Petitioner asserts that the Minnesota Court misapplied or ignored equal protection principles applicable to statutory review. On the contrary, the Minnesota Court adhered to traditional equal protection standards by acknowledging that: (1) the judiciary accords deference to the legislature and may not exercise legislative judgment (A. 5);[2] (2) the legislative branch may undertake reform one step at a time (A. 15); and (3) "the relevant test is whether the classification is rationally related to a legitimate state interest." (A. 4.)

Application of these standards does not, however, immunize a legislative act from judicial scrutiny. On the contrary, their application requires detailed analysis of the facts. Regardless of the nature of the statute, an equal protection challenge requires the reviewing court to consider "the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disad-

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[2] Appendix references are to the Minnesota Supreme Court decision as reproduced in Appendix A to the Petition for Writ of Certiorari.

vantaged by the classification." *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed.2d 24, 31 (1968). *See Illinois State Board of Elections v. Socialist Workers Party*, —— U.S. ——, ——, 99 S.Ct. 983, 990, 59 L.Ed.2d 230, 241 (1979).

Review of these factors by the Minnesota Court was hardly cursory. The Court analyzed in detail the effects of the Act and all of the assertions made by Petitioner in support of the Act in an effort to find a rational nexus between the Act and its purported objectives. It found none. Justice C. Donald Peterson, writing for the Court, observed:

> We are aware of the deference that is accorded to the legislature when the present type of statute is analyzed on equal protection grounds. Nevertheless, our inquiry into the constitutional propriety of the present classification separating paper containers from plastic nonrefillables is dependent upon facts. Based upon the relevant findings of fact by the trial court, supported by the record, and upon our own independent review of documentary sources, we believe the evidence *conclusively demonstrates* that the discrimination against plastic nonrefillables is not rationally related to the Act's objectives.

(A. 5, emphasis added.)

In its lengthy review of solid waste management issues (the primary thrust of Petitioner's defense), the Minnesota Court discussed generation of leachates and methane gas in landfills, landfill stability and instability, consumption of landfill space, incineration, recycling, and source reduction. It concluded, not that plastic milk containers present greater problems than paper milk cartons, or even similar problems, but that plastic containers "are superior to paper containers

for landfill disposal" and "[t]he evidence conclusively demonstrates that plastic nonrefillables present fewer solid waste problems than paper containers." (A. 6, 10.)

The Court also held that there is no factual basis for distinguishing between plastic and paper containers as a means of preventing energy waste or conserving natural resources. Petitioner erroneously asserts that the Court's decision would operate to invalidate any action designed to reduce consumption of oil or natural gas unless such action would result in substantial fuel savings. (Petition, p. 15.) The Court held that the Act "is not reasonably related to the state's interest in preventing energy waste," noting that "production of plastic nonrefillables requires less energy than production of paper containers." (A. 11-12.) It further held that the Act "is not reasonably related to the state's interest in conserving natural resources," because "[i]f any container is likely to have the potential for reducing depletion of natural resources, it is the plastic nonrefillable." (A. 12.)[3]

In addition to solid waste management and conservation of energy and natural resources, the Minnesota Court considered the other environmental factors analyzed in the Midwest Research Institute Report, including consumption of water and raw materials and generation of water-borne waste and industrial solid waste. It observed that, "when

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[3] Petitioner suggests that any action purportedly intended to decrease consumption of oil or natural gas is "per se reasonable." (Petition, p. 15, n. 12.) Under this theory a legislature could enact, insulated from judicial review, a statute which bans the sale of any item made of plastic that could be made of wood or paper, or any article of clothing made of synthetic fibers that could be made of wool, cotton, or silk. We doubt that Petitioner is really this cavalier about either the depletion of Minnesota's own timber resources or the other obvious economic and environmental ramifications of its suggestion. For example, the chaos created by the conflicting actions of individual states would be intolerable—a factor which highlights the merits of Respondents' argument under the Commerce Clause (see Section III, *infra*).

other environmental factors are considered, *the superiority of plastic nonrefillables is more evident.*" (A. 13, n. 19, emphasis added.)

Petitioner's arguments that the Act was designed to prevent the plastic container (an alleged newcomer to the market) from obtaining a significant foothold in Minnesota and to encourage a return to a system of returnable milk containers were also addressed by the Minnesota Court. It found no evidentiary support for these assertions.[4]

In another effort to attract this Court's attention, Petitioner blatantly mischaracterizes the opinion of the Minnesota Court concerning step-by-step legislative reform. The decision neither holds nor implies "that all undesirable packages be eliminated at once or none may be eliminated." (Petition, p. 13.) The Court held precisely the opposite:

> We do not doubt that legislatures may implement economic programs step-by-step, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations. See, e.g., Katzenbach v. Morgan, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966); Williamson v. Lee Optical Co., 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955).

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[4] Contrary to the implications in Petitioner's Statement of the Case, the plastic milk container has been widely used in Minnesota for many years. It is only in the Minneapolis-Saint Paul metropolitan area that its extensive use began as late as 1976. Respondents Marigold Foods, Inc., a large Minnesota dairy whose main plant is in Rochester, Minnesota, and Wells Dairy, Inc. began using the plastic container in large quantities in Minnesota in 1973. (R. 421, 449.) Other dairies have used the plastic container in Minnesota for up to ten years. (R. 354.)

The plastic container did not displace returnable containers in Minnesota. The paper carton had already displaced returnables before the plastic container was introduced. (R. 467-468.) Thus consumer preference for the plastic container has not been at the expense of returnables, but of the environmentally inferior paper carton.

The Court continued:

> However, such a step must, at the very least, have a rational relationship to achievement of a legitimate state interest. In the present case, the result of the Act, at best, will not be a step toward amelioration of a perceived evil.

(A. 15-16.) In other words, as indicated throughout the opinion, the Act will not serve to ameliorate solid waste or other environmental problems. It will aggravate such problems by expanding the use of the paper carton and thus more firmly entrenching in the market a container which is environmentally inferior to that banned by the Act. To be valid as a purported step toward resolution of a larger problem, the step must be forward, not backward.[5]

Thus this case is unique, not with respect to governing legal principles, but the factual setting to which the principles were applied. Having failed in both the trial court and Supreme Court to demonstrate a rational basis for the Act, Petitioner now seeks a third judicial analysis of extensive and complex facts. Certiorari is not appropriate for that purpose.

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[5] This is unlike the situation in *City of New Orleans v. Dukes*, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976), which sustained an ordinance that was a first step toward eliminating existing problems caused by pushcart vendors in the French Quarter. In barring only those who had operated for less than eight years, the ordinance at least reduced the number of undesirable operations. The problems allegedly addressed by the Minnesota statute, particularly those relating to solid waste, would not be reduced at all, but would be aggravated. Of the two containers in widespread use in Minnesota, the least offensive would be banned, and the most offensive would expand and take over the entire market.

II. THE MINNESOTA DECISION DOES NOT THREATEN THE LEGISLATIVE PROCESS.

By misstating both the holding and reasoning of the Minnesota Court, Petitioner distorts the impact of the decision. The Court did not reject legislative reform on a step-by-step basis. It reiterated the long-established principle that legislation, in the environmental field as in any other, must have at least a rational relationship to a legitimate state interest.

No legislative body at any level of government is unfamiliar with the rational basis requirement. This Court and lower courts have articulated and applied it on innumerable occasions. Whether its application will sustain a particular legislative action always depends upon determined facts — the nature and effect of the classification and the state interests asserted in support of it.

Packaging legislation has been in existence for several years. When it has met constitutional standards, it has been upheld. *Anchor Hocking Glass Corp. v. Barber*, 105 A.2d 271 (Vt., 1954); *American Can Co. v. Oregon Liquor Control Commission*, 517 P.2d 691 (Ore., 1973); *Bowie Inn, Inc. v. Bowie*, 335 A.2d 679 (Md., 1975); *Can Manufacturers, Inc. v. State of Minnesota*, ——N.W.2d——, 13 ERC 1689 (Minn., 1979). *See also United States Brewers Ass'n., Inc. v. Environmental Protection Agency*, 600 F.2d 974 (D.C. Cir., 1979). When rationality has been lacking, it has been invalidated. *The Society of the Plastics Industry, Inc. v. City of New York*, 326 N.Y.S.2d 788, 3 ERC 1370 (N.Y. Sup. Ct., 1971); *Juice Tree of Hawaii, Inc. v. Yuen*, ——P.2d——, 9 ELR 20739 (Hawaii Cir. Ct., 1979). Legislative bodies may look for guidance to a wide variety of existing legislation and a substantial body of judicial analysis. *See Plastic Bans,*

Bottle Bills, and Comprehensive Container Legislation: Packaging Laws Get Mixed Reviews in State Courts, 9 Environmental Law Reporter 10193 (Nov., 1979).

Minnesota need not fear for the vitality of its environmental programs. Its Supreme Court has been vigilant in implementing the state's far-reaching environmental legislation. *See e.g., County of Freeborn v. Bryson*, 210 N.W.2d 290 (Minn., 1973); *County of Freeborn v. Bryson*, 243 N.W.2d 316 (Minn., 1976) (interpreting the Minnesota Environmental Rights Act).

This is also true of packaging legislation. The same day that the instant decision was issued the Minnesota Supreme Court, in an opinion also written by Mr. Justice Peterson, upheld the Minnesota Package Review Act. *Can Manufacturers, Inc. v. State of Minnesota, supra.* This statute, Minn. Stat. § 116F.06, gives the Minnesota Pollution Control Agency extensive powers to regulate the use of new packages and containers.

That it was the Minnesota Supreme Court which invalidated Chapter 268 is therefore particularly indicative of the shortcomings of this purportedly environmental statute. Had the Act been rationally related to legitimate state interests, it would certainly have been upheld. The lack of a rational environmental basis for the Act undoubtedly resulted from the fact that its real purpose was not to protect the environment but to protect the economic interests of certain Minnesota businesses to the exclusion of out-of-state interests. See Section III, *infra.*[6]

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[6] "This Court need not in equal protection cases accept at face value assertions of legislative purposes, when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation." *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 (n. 16), 95 S.Ct. 1225, 1233, 43 L.Ed.2d 514, 525 (1975).

Nor does this case threaten the integrity or effectiveness of the legislative process in other jurisdictions. To the extent that this case may deter irrational packaging legislation, it will serve a valuable purpose. Any "chilling effect" (Petition, p. 16) will flow only from a mischaracterization of the decision. The constitutional standards are clear, and they were properly articulated and applied by the Minnesota Supreme Court.

III. FURTHER APPELLATE REVIEW MAY NECESSITATE INVALIDATION OF THE ACT UNDER THE COMMERCE CLAUSE.

The trial court concluded that Chapter 268 also contravenes the Commerce Clause. The Minnesota Supreme Court did not consider the Commerce Clause issue because its equal protection analysis was sufficient to strike down the Act. Should certiorari be granted, this Court may have to rule on the Commerce Clause issue or prolong the appellate process by requiring the Minnesota Court to consider it.[7]

The burdens imposed by the Act on Respondents' activities in interstate commerce are substantial. The statute severely curtails the ability of out-of-state manufacturers of plastic resin and molding machines to market their products in Minnesota. (R. 244, 247, 309.) It undermines the competitive position of Minnesota and out-of-state dairies which sell milk in Minnesota and elsewhere. (R. 346, 427-428, 460.)

Respondents will not undertake an extensive analysis of the Commerce Clause issue. A noteworthy element of the Act,

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[7] The trial court also concluded that the Act violates substantive due process requirements. The Minnesota Supreme Court observed that the rational basis standard is applicable to due process as well as equal protection analysis. (A. 16, n. 20.)

however, is the discerned real purpose behind its passage. The effect of the Act is to exclude plastic milk containers from Minnesota markets to the benefit of the local paper industry; this purpose is inferable from the Act's operation and its illusory environmental benefits. Under these circumstances a reviewing court will consider the purpose and motivation which underlay its enactment to test its validity under Commerce Clause standards. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 352, 97 S.Ct. 2434, 2446, 53 L.Ed.2d 383, 400 (1977); *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, 446-447, 98 S.Ct. 787, 797, 54 L.Ed. 2d 664, 678-679 (1978); Note, *Environmental Protection Legislation and the Commerce Clause*, 87 Harv. L. Rev. 1762, 1772-1773 (1974).

The legislative debates which preceded passage of the Act confirm that its purpose was to insulate the local paper industry from out-of-state plastics competition, the latter being characterized by a sponsor of the bill as "the guys in the alligator shoes from New York and Chicago." (R. 118.) Senator Collin Peterson aptly summarized the situation when he said during floor debate, ". . . this bill is an inter-industry economic struggle. It is not an environmental bill at all." (R. 122.)

Should consideration of the commerce issue become necessary, the Act will not stand. *See, City of Philadelphia v. New Jersey*, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978); *Hunt v. Washington State Apple Advertising Commission, supra*; *Raymond Motor Transportation, Inc. v. Rice, supra*; *Hughes v. Oklahoma*, —— U.S. ——, 99 S.Ct. 1727, 60 L.Ed. 2d 250 (1979).

CONCLUSION

This case does not involve a federal question of substance which has not already been determined by this Court. The decision of the Minnesota Supreme Court is in accord with established constitutional principles and applicable decisions of this Court.

The Petition for Writ of Certiorari should be denied.

Dated: February 26, 1980.

Respectfully submitted,

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